

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**TERRI PEPPER, ANN BENITEZ,
DENISE ARNOLD, and SAMUEL
ROGERS,**

Plaintiffs,

v.

LIBERTY POWER CORP., LLC,

Defendant.

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CIVIL ACTION NO. 4:20-cv-2964

UNOPPOSED MOTION TO WITHDRAW AS COUNSEL

Pursuant to Local Rule 83.2 and Texas Disciplinary Rule of Professional Conduct 1.15, Hogan Lovells US LLP (“Hogan Lovells”) hereby requests leave to withdraw as counsel for Defendant Liberty Power Corp., LLC (“Liberty”) and would respectfully show the Court as follows:

1. This lawsuit was commenced on August 24, 2020, and Hogan Lovells was retained by Liberty as counsel shortly thereafter and entered an appearance.
2. On December 9, 2020, this Court entered an agreed Amended Scheduling Order setting forth deadlines for the remainder of this litigation. Dkt. 19. The parties have also discussed additional deadlines and solutions to resolving this litigation.
3. On April 20, 2021, Liberty Power Holdings LLC (“Holdings”) voluntarily filed for bankruptcy in the Southern District of Florida under chapter 11 of title 11 of the United States Code. *In re Liberty Power Holdings, LLC* (Cause No. 0:21-bk-13797). Liberty is identified as Holdings’ “ultimate parent company” in the declaration of Holdings’ Chief Restructuring Officer.

Id. (Dkt. 10). On April 22, 2021, Liberty entered a notice of appearance and reservation of rights in the Holdings Bankruptcy.¹ *Id.* (Dkt. 20).

4. It is Hogan Lovells’ understanding that its primary client contact was terminated by Liberty on or about April 20, 2021.

5. On May 19, 2021, Liberty filed a petition in the 17th Judicial Circuit in Broward County, Florida, commencing an Assignment for the Benefit of Creditors (the “ABC”) pursuant to chapter 727 of the Florida Statutes (Cause No. CACE-21-010056). *See* Ex. A (Notice of Assignment for the Benefit of Creditors) ¶ 1.²

6. Hogan Lovells has no involvement with the ABC.

7. The sworn declaration of Liberty’s Majority Owner and past Chief Executive Officer David Hernandez (filed on June 23, 2021, in an unrelated case pending in Massachusetts and later filed in Cause No. CACE-21-010056 in Florida) states that a third party, Assignee Philip J. Von Kahle (the “Assignee”) “is now in possession of all of Liberty Power Corp.’s assets[.]” Ex. B (Declaration of D. Hernandez). The declaration further states that “Liberty Power Corp. is no longer in custody, control or possession of its servers containing emails or documents” and that it is “unable to hire defense counsel[.]” *Id.*

8. On July 23, 2021, Hogan Lovells emailed the Assignee that appears to be in control of Liberty’s assets at the email address listed in Liberty’s Notice of Assignment for the Benefit of

¹ Hogan Lovells does not represent Liberty in the Holdings Bankruptcy and has not been informed of or consulted regarding that appearance.

²Chapter 727 requires that all claims or contingent claims that arose prior to the ABC’s filing date be filed “by delivering the claim to the assignee within 120 days from the filing date unless for cause shown[.]” in this case September 16, 2021. 13 Fla. Jur. 2d Creditors’ Rights § 727.112(1)–(2). Additionally, “[e]xcept in the case of a consensual lienholder enforcing its rights in personal property or real property collateral, there shall be no levy, execution, attachment, or the like in respect of any judgment against assets of the estate in the possession, custody, or control of the assignee.” 13 Fla. Jur. 2d Creditors’ Rights § 727.105. Hogan Lovells has no involvement in the Florida proceeding, nor was Hogan Lovells aware of that proceeding.

Creditors. *See* Ex. A (Notice of Assignment for the Benefit of Creditors) at 3. On July 29, 2021, counsel for Assignee responded that Assignee has no position in this lawsuit and no objection to Hogan Lovells' withdrawal.

9. On July 29, 2021, Hogan Lovells emailed Liberty's counsel in the ABC (the "ABC counsel") to inform him of Hogan Lovells' intent to withdraw as Liberty's counsel in this lawsuit. The ABC counsel does not oppose Hogan Lovells' withdrawal.

10. Texas Disciplinary Rule of Professional Conduct 1.15 permits the withdrawal of counsel when "the representation . . . has been rendered unreasonably difficult by the client." Tex. R. Disc. P. 1.15(b)(6). Withdrawal is appropriate pursuant to this Rule because the Holdings Bankruptcy and the apparent assignment of all of Liberty's assets to Assignee has rendered representation of Liberty unreasonably difficult such that Hogan Lovells is unable to continue to represent Liberty in this litigation. *See id.*

11. Texas Disciplinary Rule of Professional Conduct 1.15 also permits the withdrawal of counsel when "withdrawal can be accomplished without material adverse effect on the interests of the client." Tex. R. Disc. P. 1.15(b)(6). Hogan Lovells' withdrawal also is appropriate because it will not prejudice Liberty in light of chapter 727's bar on enforcing a judgment against an ABC assignor such as Liberty. *See* 13 Fla. Jur. 2d Creditors' Rights § 727.105. In addition, although the discovery deadline is set for August 13, there are no immediate deadlines in this lawsuit. Thus, Liberty has ample time to obtain new counsel for this lawsuit to the extent it needs to do so. For both these reasons, Hogan Lovells' withdrawal will not have a material adverse effect on the interests of Liberty.

CONCLUSION

For the foregoing reasons, Hogan Lovells US LLP respectfully requests this Court grant its request to withdraw from further representation of Defendant Liberty Power Corp., LLC in this litigation.

Dated: August 5, 2021

Respectfully submitted,

By: /s/ Aaron R. Crane

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***Counsel for Defendant Liberty Power Corp.,
LLC.***

CERTIFICATE OF CONFERENCE

I hereby certify that on August 5, 2021, I spoke with counsel of record for Plaintiffs regarding the foregoing motion. Plaintiffs do not oppose this motion.

/s/ Sydney C. Rupe

Sydney C. Rupe

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all counsel of record via the Court's CM/ECF system on August 5, 2021.

/s/ Aaron R. Crane

Aaron R. Crane